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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,154	08/04/2003	Kenneth W. Stearns		5108

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EXAMINER

AMERSON, LORI BAKER

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,154

Applicant(s)

STEARNS, KENNETH W.

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claim 1-7, 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen. Rasmussen discloses an apparatus having a backrest 41, a foot platform with foot engaging surfaces 97,98 and interconnecting means 20,24,88 and resisting means 71. Regarding the language in lines 9-16 and 17-20 [beginning with the word “for interconnecting....”, “for resisting...”] has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claims 2-3, further comprising adjusting means 120 and 23. Regarding the language “for selectively adjusting...” has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, the backrest extends generally perpendicular (figure 1). As to claim 5, the interconnecting means interconnects the platform and the backrest. Regarding the language, “in such a manner.....” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 6, see claim 1 above. As to claims 7-8, the resisting means includes a weight stack or plate connected to the back rest (figure 4A). As to claim 10, the language has

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not been given patentable weight because the recitation is purely functional in nature and does not recite any structure.

b. Claim 1, 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Habing. Habing discloses an apparatus having a back rest 326, a foot platform with foot engaging surfaces 332 and interconnecting means 310 and resisting means 358. Regarding the language in lines 9-16 and 17-20 [beginning with the word "for interconnecting....", "for resisting..."] has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, the backrest extends generally perpendicular (figure 9). As to claim 5, the interconnecting means interconnects the platform and the backrest. Regarding the language, "in such a manner...." has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 6, see claim 1 above.

c. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Sokol. Sokol discloses an apparatus having a back rest 143, a foot platform with foot engaging surfaces 162 and interconnecting means 16 and resisting means 209. Regarding the language in lines 9-16 and 17-20 [beginning with the word "for interconnecting....", "for resisting..."] has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

d. Claim 1-6, 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Giannelli et al. Giannelli et al disclose an apparatus having a back rest 62, a foot platform with foot engaging surfaces 32,30 and interconnecting means 54,52 and resisting means 90. Regarding the language in lines 9-16 and 17-20 [beginning with the word “for interconnecting....”, “for resisting...”] has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claims 2-3, further comprising adjusting means 58,56. Regarding the language “for selectively adjusting...” has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, the backrest extends generally perpendicular (figure 5). As to claim 5, the interconnecting means interconnects the platform and the backrest. Regarding the language, “in such a manner.....” has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 6, see claim 1 above. As to claim 10, the language has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

e. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen as applied to claim 6 above and further in view of Drath.

Rasmussen discloses all of the limitations of the claimed invention except for the weight stack connected to the foot platform. Thus, Drath shows a device where the weight stack is connected to the foot platform. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the location of the weight stack such that the back rest and foot platform are interconnected and the same resistance is applied to the user whether the stack is connected in a front (platform) or rear end (backrest) of the device.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the device of Jones on the Form 892. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Lori Amerson".

Lori Amerson